

Craig D. Hansen (AZ Bar No. 007405)  
Thomas J. Salerno (AZ Bar No. 007492)  
Larry L. Watson (CA Bar No. 193531)\*  
**SQUIRE, SANDERS & DEMPSEY L.L.P.**  
Two Renaissance Square  
40 North Central Avenue, Suite 2700  
Phoenix, Arizona 85004-4498  
(602) 528-4000  
Attorneys for Baptist Foundation of Arizona, Inc.  
and certain subsidiaries

**IN THE UNITED STATES BANKRUPTCY COURT**  
**FOR THE DISTRICT OF ARIZONA**

In re:	)	In Proceedings Under Chapter 11
	)	
BAPTIST FOUNDATION OF ARIZONA, an	)	Case Nos. 99-13275-ECF-GBN through 99-
Arizona nonprofit 501(c)(3) corporation, and	)	13364-ECF-GBN
related proceedings,	)	
	)	All Cases Jointly Administered Under Case
	)	No. 99-13275-ECF-GBN
Debtors.	)	
	)	<b>DEBTORS' OBJECTION TO CLAIM OF</b>
	)	<b>GRAND CANYON UNIVERSITY</b>
	)	
	)	
	)	
	)	
	)	
	)	
	)	

---

Pursuant to Rule 3007 of the Bankruptcy Rules of Procedure and Section 502(a) of the Bankruptcy Code, Debtor and Debtor-in-Possession, Baptist Foundation of Arizona, Inc. (and certain of its subsidiaries, who also may be co-debtors, as applicable; collectively “**BFA**”), submits the following objection to the proof of claim filed by Grand Canyon University (“**GCU**”). In support of this objection, BFA offers the following memorandum of points and authorities.

## **MEMORANDUM IN SUPPORT OF OBJECTION**

### **I. FACTS**

1. On March 31, 2000, GCU filed a proof of claim seeking payment of the following:
  - a. \$3,213,030.85, as an unsecured investor, for various investments held by BFA, including an Easy Access Account;
  - b. \$3,667,000, as a secured creditor, for the balance allegedly owing under a Note (the “**GCU Note**”) and accompanying Deed of Trust (the “**GCU Deed of Trust**”) executed by Cora Properties, L.L.C. on or about June 24, 1998; and
  - c. a quarterly \$24,425 annuity payment relating to the Millet Charitable Gift Annuity, for which BFA is primarily obligated and Grand Canyon University serves as guarantor.
2. On October 30, 2000, this Court indicated its approval for that certain Acquisition Agreement by which Shea Homes will purchase the Pleasant Point development from BFA. The GCU Trust Deed encumbers a portion of the real property subject to the Acquisition Agreement. The Acquisition Agreement contemplates the satisfaction of the GCU Note and the release of the GCU Trust Deed.

### **III. ARGUMENT**

Objections to claims are governed by 11 U.S.C. § 502(a), which provides that “[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, . . . objects.” Section 502(b) provides that “[i]f such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount.” Federal Rule of Bankruptcy Procedure 3001(f) provides that a proof of claim filed in accordance with the rules “shall constitute prima facie evidence of the validity and

amount of the claim.” The burden of proof is on the objecting party to produce evidence equivalent in probative value to that of the creditor to rebut the prima facie effect of the proof of claim. However, “the ultimate burden of persuasion is always on the claimant.” In Re Holm, 931 F.2d 620, 623 (9th Cir. 1991) (citing 3 L. King, *Collier on Bankruptcy* § 502.02, at 502-22 (15th ed. 1991) (footnotes omitted)). A properly supported objection to a claim initiates a contested matter under the Bankruptcy Rules of Procedure. See Fed. R. Bankr. P. 3007(adv. comm. note).

#### **A. Investor Claims**

GCU’s claims relating to its Easy Access Account, as well as the endowment accounts, trusts, notes and unitrusts for which it is the beneficiary, are all Investor Claims. As this Court is aware, Investor Claims are dealt with as a class in BFA’s Plan of Reorganization. BFA refers the Court to its Omnibus Objection to Investor Claims, which it incorporates herein by reference.

Moreover, GCU lacks standing to assert these Investor Claims. It is the beneficiary, not the trustee, of these investments. Each of the trustees has filed a proof of claim relating to the trusts, and GCU’s claims are wholly duplicative.

#### **B. GCU Note and GCU Trust Deed**

As set forth above, in the “Facts” section of this memorandum, it is anticipated that the GCU Note and GCU Trust Deed will be satisfied and released as part of the Pleasant Point transaction that recently was approved by this Court. BFA conditionally objects to this portion of GCU’s claim only to the extent that it seeks a greater recovery or alternate relief than is contemplated in the Acquisition Agreement approved by this Court.

#### **C. Millet Gift Annuity**

GCU's claim relating to the Millet Gift Annuity is an Investor Claim, and is duplicated by a claim filed by the Millets. To that extent, BFA incorporates by reference its Omnibus Objection to Investor Claims.

To the extent, however, that GCU's claim relating to the Millet Gift Annuity is a claim for contractual indemnity or contribution, it should be disallowed pursuant to Section 502(e) of the Bankruptcy Code. Section 502(e)(1) applies to claims for reimbursement or contribution as characterized under state or federal statutory law or common law. See 5 Collier on Bankruptcy, § 502.06 (15th ed. 2000). Usually this section applies to contractual relationships, like the one that exists between BFA and GCU, but also has been applied to tort claims.

The Ninth Circuit has applied a three part test under this statute to determine if a claim should be disallowed, stating that "if (1) the claim is for reimbursement or contribution; (2) the party asserting the claim is liable with the debtor on the claim of a creditor; and (3) the claim is contingent at the time of allowance or disallowance," then the claim is disallowed. In re Dant & Russell, Inc., 951 F.2d 246, 248 (9<sup>th</sup> Cir. 1991).

GCU's claim satisfies this three-part test, whether the nature of its claim is purely contractual or predicated on a joint liability arising from a tort claim by the Millets. Accordingly,

this Court should disallow GCU's claim for indemnity.

RESPECTFULLY SUBMITTED this 7th day of November, 2000.

**SQUIRE, SANDERS & DEMPSEY L.L.P.**

Two Renaissance Square

40 North Central Avenue, Suite 2700

Phoenix, Arizona 85004-4441

By: /s/ Craig D. Hansen

Attorneys for Baptist Foundation of Arizona, Inc.,  
and certain of its subsidiaries and affiliates